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BEFORE THE ARIZONA MEDICAL BOARD

In the Matter of

LeROI A. BAEZ, M.D.,

Holder of License No. 30154
For the Practice of Allopathic Medicine in the
State of Arizona

Docket No. **07A-30154-MDX**

Case No. MD-07-0126A

**FINDINGS OF FACT, CONCLUSIONS
OF LAW AND ORDER PROBATION**

On August 8, 2007 this matter came before the Arizona Medical Board ("Board") for oral argument and consideration of the Administrative Law Judge ("ALJ") Brian Brendan Tully's proposed Findings of Fact and Conclusions of Law and Recommended Order involving LeRoi A. Baez, M.D. ("Respondent"). Respondent was notified of the Board's intent to consider this matter at the Board's public meeting. Respondent did appear and was represented by counsel, Daniel P. Jantsch. The State was represented by Assistant Attorney General Anne Froedge. Christine Cassetta, Assistant Attorney General with the Solicitor General's Section of the Attorney General's Office provided legal advice to the Board.

The Board having considered the ALJ's recommended decision and the entire record in this matter hereby issues the following Findings of Fact, Conclusion of Law and Order.

FINDINGS OF FACT

1. The Arizona Medical Board ("Board") is the authority for licensing and regulating the practice of allopathic medicine in the State of Arizona.

2. Respondent is the holder of License No. 30154 for the practice of allopathic medicine in the State of Arizona. He practices gastroenterology in Tucson, Arizona.

3. On or about March 2, 2007 A.C. filed a written complaint against Respondent with the Board alleging Respondent had sexually assaulted her at his office on March 1, 2007.

4. A.C. has known Respondent since 2002. A.C. was a patient of Respondent for approximately two to three years. He performed an endoscopy for her in September 2004. She

1 visited his office on one occasion, and they had hallway consultations at various times at St.
2 Joseph's hospital, where Respondent had privileges and A.C. works as a personal care
3 technician.

4 5. A.C. and Respondent had a "flirting" relationship. A.C. has been in a long term
5 relationship. Respondent is married and met his wife in medical school.

6 6. In late November and December of 2005, A.C. had worked part-time for
7 Respondent doing filing work at his office. On or about December 22, 2005 Respondent paid A.C.
8 by check the sum of \$126.50 for her work. After that date she no longer worked for Respondent.

9 7. On March 1, 2007 A.C. telephoned Respondent on his cell phone because she
10 was experiencing severe abdominal pain for several months. Respondent agreed to see her at his
11 office that afternoon.

12 8. Respondent commonly gave his cell phone number to patients and employees.

13 9. On March 1, 2007 at approximately 5:45 p.m, A.C. arrived at Respondent's
14 office. Respondent unlocked the back office door, admitted A.C. and then locked the office door.

15 10. A.C. told Respondent that her primary care physician had recommended she
16 undergo a colonoscopy to investigate her condition. Respondent performed an examination of
17 A.C. and he also recommended she undergo a colonoscopy to determine the source of her severe
18 pain. A.C. asked Respondent for a referral because she was uncomfortable having him perform
19 the procedure since they worked in the same area of the hospital.

20 11. Respondent had been supplying A.C. with free samples of Prevacid because the
21 medication was expensive. He commonly did that for other patients, especially hospital
22 employees. After the examination on March 1, 2007 A.C. followed Respondent to a closet where
23 Respondent removed a quantity of Prevacid and gave the samples to A.C.

24 12. After giving A.C. the samples, the next occurrence becomes a "he said/she said."
25 A.C. testified that Respondent's demeanor changed immediately and he forcibly made sexual

1 advanced towards her. A.C. contends that Respondent aggressively kissed her on the mouth and
2 groped at her breasts. A.C. testified that she pleaded with Respondent to stop. A.C. testified that
3 she did not yell, but did ask Respondent to stop. She said that he eventually did stop, and then
4 unlocked the office back door so that she could leave the office.

5 13. A.C. contends that Respondent caused her lip to swell and that she received a
6 bruise to her right upper arm.

7 14. Respondent testified that the sexual advances did not occur.

8 15. On March 2, 2007 A.C. reported the incident to hospital administration at St.
9 Joseph's hospital and the Tucson Police Department. No criminal charges have been filed against
10 Respondent in this matter. She also filed a written complaint with the Board.

11 16. Also on March 2, 2007 the Board's investigator, Celina Shepard, conducted a
12 telephonic interview of A.C. after receiving her written complaint.

13 17. On March 7, 2007 A.C. was interviewed by Board Staff Marlene Young and Kelly
14 Sems, M.D. She was again interviewed by Ms. Young on March 8, 2007.

15 18. On March 8, 2007, Respondent was interviewed by Ms. Young and Mark
16 Nanney, M.D., the Board's chief medical consultant at the time. Respondent's attorney at the time,
17 David Hill, also was present.

18 19. On March 8, 2007, Ms. Young conducted an investigational interview with
19 Respondent's accountant Dormi Torrey who stated she was working in Respondent's office the
20 evening of the alleged incident, but that she was in another area of the office. At the hearing, Ms.
21 Torrey testified that she did not know that anyone, other than Respondent, was in the office while
22 she was there. She heard Respondent speaking, but she assumed that he was dictating. She did
23 not hear or see A.C. while she was working in the office that evening.

24 20. Ms. Torrey testified that she telephoned Respondent on his cell phone at 5:45
25 p.m., which is documented in his cell phone records. Ms. Torrey said that she was in the parking

1 lot of Respondent's office and, although she had keys for the office, she asked him to open the
2 office's door.

3 21. Mr. Torrey said Respondent shortly after the telephone call opened the door for
4 her. Ms. Torrey's testimony was that she then spent approximately 15 minutes discussing matters
5 with Respondent before she proceeded to work on her projects. Given the totality of the evidence,
6 that 15 minute meeting would have been during the time that A.C. presented to Respondent's
7 office.

8 22. On March 8, 2007 the Board, through its Executive Director, issued an Interim
9 Order (Evaluation at Sexual Recovery Institute), a Confidential Investigative Order, in Case No.
10 MD-07-0126A. The Interim Order required Respondent to "undergo an evaluation within 10 days
11 from the date of this Order at Sexual Recovery Institute (SRI)."

12 23. On March 15, 2007 Dr. Philip Balch, a psychologist, performed a two-hour
13 psychosexual risk assessment of Respondent at the request of his criminal defense attorney.

14 24. At the request of Respondent's criminal defense attorney, Dr. Balch did not
15 interview Respondent about the alleged sexual assault, which is something Dr. Balch would have
16 normally done. Dr. Balch also did not have access to any documents pertaining to the alleged
17 assault.

18 25. After performing his evaluation, Dr. Balch opined that Respondent "presents with
19 little, if any loading on any of these factors and little, if any, risk based on my work with him to be a
20 risk to the community or to anybody in the community."

21 26. Respondent timely reported to SRI for a psycho-sexual evaluation on March 19,
22 2007. Respondent completed his evaluation at SRI on March 22, 2007.

23 27. During the SRI evaluation, based upon the advice of his then legal counsel,
24 Respondent refused to give any insight into what would have motivated A.C. to claim to have been
25

1 assaulted if it did not happen. Apparently Respondent felt that such information, if disclosed, could
2 be used against him in legal proceedings.

3 28. On March 23, 2007 Respondent telephoned SRI staff admitting that there was
4 more to the story and requested a meeting, which was scheduled that afternoon. Shortly before
5 the scheduled meeting, Respondent telephoned SRI staff and stated that he would not disclose
6 the withheld information and cancelled the meeting.

7 29. On March 23, 2007 Kathleen Muller of the Board's Staff sent an email to SRI
8 inquiring into the status of Respondent's evaluation. Cecilia Quigley, M.A., the Administrative
9 Director of SRI, responded as follows:

10 They are still evaluating-but there are definitely some
11 concerns. Even though it is still developing it is clear that we
12 will not recommend immediate return to work. (Emphasis in
13 the original).

14 30. On March 26, 2007 the Board's Executive Director, Timothy C. Miller, J.D.,
15 issued Interim Findings of Fact, Conclusions of Law and Order for Summary Suspension of
16 License against Respondent's medical license in Case. No. MD-07-0126A.

17 31. On March 29, 2007 Omar Minwalla, Psy.D. and Lisa Meneshian, MPH, Ph.D.,
18 issued a SRI Psychosexual Evaluation/Professional Assessment for Respondent. The evaluators
19 made the following conclusion:

20 ...it is the opinion of the examiner that Dr. Baez is withholding
21 relevant information that makes it difficult to determine what
22 course of action would be appropriate. It is suspected that this
23 information may indicate that Dr. Baez has engaged in
24 unethical, illegal and/or otherwise inappropriate behavior, but
25 this is unsubstantiated.

32. The SRI evaluators report contains the following recommendations:

At this time, there is certain indication that Dr. Baez is
intentionally withholding pertinent information that would be
necessary to best determine his fitness for duty as a physician
and any treatment needs or practice restrictions. Given this, it
is not recommended that Dr. Baez continue to practice under
any circumstances, until such time that he decides to be more
forthcoming with information that is pertinent and relevant to

1 these serious allegations of sexual assault. Only then can
2 appropriate recommendations, further investigation, and
 options for any necessary treatment be legitimately
 determined.

3 33. The SRI evaluators felt that consideration should be given to Respondent having
4 had a least two affairs. Mrs. Baez credibly testified that those affairs occurred when she and
5 Respondent were not in a committed relationship. She stated that she was also dating at the time
6 and assumed during that period of time that Respondent was also dating others. Respondent and
7 Mrs. Baez later became committed and eventually married.

8 34. Bradley R. Johnson, M.D. testified as an expert witness for Respondent. Dr.
9 Johnson specializes in psychiatry and sub-specializes in general psychiatry, child psychiatry and
10 forensic psychiatry.

11 35. Dr. Johnson performed an evaluation of Respondent on April 7 and 10, 2007.

12 36. During Dr. Johnson's evaluation, Respondent speculated that he believed that
13 A.C. made the allegations against him due to her feeling rejected by him. While that may or may
14 not be true, such speculation does not seem to be of the type that could be used against
15 Respondent in a legal proceeding as he indicated to SRI's evaluation team.

16 37. Dr. Johnson opined that he does not believe Respondent suffers from a
17 psychosexual disorder. Dr. Johnson concluded that "there's no evidence that he is at any imminent
18 risk or likely a danger to society."

19 38. At the hearing Respondent gave sworn testimony concerning a check in the
20 amount of \$500.00 dated December 29, 2005 from himself to A.C. A copy of the check was
21 admitted into evidence. The memo line for the admitted check reads "Loan." Respondent testified
22 the photocopied check accurately reflected the check given to A.C. During cross examination,
23 Respondent denied that the word "Loan" had been added after the fact.

24 39. At the hearing, A.C. also gave sworn testimony concerning the check. She
25 testified she had not received a check with the "Loan" notation on it. She claims that the check

1 was a Christmas bonus given to all employees. The check is dated after Christmas Day, but it is
2 not clear when the check was given to A.C.

3 40. The hearing was originally concluded on May 24, 2007. However, the record was
4 reopened at the request of counsel on June 11, 2007. The reason for reopening the record was a
5 disclosure from Respondent's counsel that Respondent had given false testimony and had
6 submitted a false copy of the check.¹ In documentary evidence admitted into evidence on June 12,
7 2007, Respondent admitted that the check originally read "Payroll and wages" in the memo, but
8 that he subsequently altered the check, or a photocopy of it, by adding the word "Loan" in place of
9 "Payroll and wages."

10 41. Part of the documentary evidence admitted on June 11, 2007 attempts to show
11 payment to Respondent from A.C. That evidence was not presented during the hearing on May
12 23-24, 2007, when witnesses could have given testimony about such documentation. Without
13 such testimony and given the disclosure of Respondent's false testimony under oath, such
14 documentation about A.C. making payment to Respondent will not be considered.

15 42. As a result of the disclosure that Respondent gave false testimony under oath at
16 the hearing, he is found to lack any credibility as a witness.

17 43. A.C. had been a patient of Respondent's, she was not charged a co-pay by
18 Respondent for treatment, she had briefly worked for him, she worked at the same hospital as
19 Respondent and she received free samples of medication from Respondent, which saved her a
20 considerable amount of money by not purchasing the medication. On March 1, 2007 Respondent
21 had just given her more samples of the medication. There is no clear motive for A.C. to make up
22 the sexual assault allegation.

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25 ¹ The disclosure of Respondent's false testimony under oath and his submission of false documentary
evidence negatively affect Respondent's credibility as a witness in this matter. Any disciplinary action or
criminal prosecution for his having such false testimony is outside the scope of these proceedings.

1 44. A.C.'s account of the incident is found to be more credible than Respondent's
2 account.

3 **FINDING OF IMMEDIATE EFFECTIVENESS**

4 45. It is necessary for this decision to take immediate effect because a rehearing or
5 review is contrary to the public interest. A.A.C. R4-16-102(B).

6 **CONCLUSIONS OF LAW**

7 1. The Board has jurisdiction over Respondent and the subject matter in this case.

8 2. The Board has the burden of proof in this matter. A.R.S. § 41-1092.07(G)(2). The
9 standard of proof is preponderance of the evidence. A.A.C. R2-19-119(A). "A preponderance of
10 the evidence is such proof as convinces the trier of fact that the contention is more probably true
11 than not."² A preponderance of the evidence is "evidence which is of greater weight or more
12 convincing than evidence which is offered in opposition to it; that is, evidence which as a whole
13 shows that the fact sought to be proved is more probable than not."³

14 3. Respondent committed unprofessional conduct pursuant to A.R.S. § 32-
15 1407(27)(z).

16 4. The evidence of record supports the Board's action of summarily suspending
17 Respondent's medical license to protect the public health, safety, and welfare, pursuant to A.R.S.
18 § 32-1451(D).

19 5. Respondent should be assessed the costs of the formal hearing in this matter.
20 A.R.S. § 32-1451(M).

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² Morris K. Udall, Arizona Law of Evidence § 5 (1960).
³ Black's Law Dictionary at page 1064 (6th ed. 1990).

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1 C. Respondent shall obey all federal, state, and local laws and all rules
2 governing the practice of medicine in Arizona.

3 D. In the event Respondent should leave Arizona to reside or practice
4 outside the State or for any reason should Respondent stop practicing medicine in Arizona,
5 Respondent shall notify the Executive Director in writing within ten days of departure and return or
6 the dates of non-practice within Arizona. Non-practice is defined as any period of time exceeding
7 thirty days during which Respondent is not engaging in the practice of medicine. Periods of
8 temporary or permanent residence or practice outside Arizona or of non-practice within Arizona,
9 will not apply to the reduction of the probationary period.

10 3. If the evaluating facility makes no recommendation for continued monitoring the
11 Executive Director may terminate the probation. If the evaluating facility makes recommendations
12 for continued monitoring, treatment or other recommendation Respondent shall comply with those
13 recommendations as approved by Board Staff.

14
15 Dated this 25th day of August, 2007.



ARIZONA MEDICAL BOARD

18
19 By: [Signature]
20 Timothy C. Miller, J.D.
Executive Director

21 Original of the foregoing filed this
22 25th day of August, 2007, with:

23 Arizona Medical Board
24 9545 East Doubletree Ranch Road
Scottsdale, AZ 85258

25 Copy of the foregoing filed this
25th day of August, 2007, with:

1 Cliff J. Vanell, Director
2 Office of Administrative Hearings
1400 W. Washington, Ste. 101
Phoenix, AZ 85007

3 Executed copy of the foregoing mailed
4 by US Mail this 24th day of August,
2007, to:

5 Daniel P. Jantsch
6 Olson, Jantsch & Bakker
7243 N. 16th St.
Phoenix, Arizona 85020

8 LeRoi A. Baez, M.D.
(Address of record)

9 Dean Brekke
10 Assistant Attorney General
Office of the Attorney General
CIV/LES
11 1275 W. Washington
12 Phoenix, Arizona 85007

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